

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF Northbrook, Illinois

These Comments are filed by the Village of Northbrook in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). The Village of Northbrook firmly believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. Northbrook welcomes competitive providers of video services that provide service on a universal basis to the entire community on a "level-playing" field with other video service providers. The Village has never refused to negotiate with a competitive provider of video services and in fact actively sought out and successfully negotiated with a second cable system operator, although, due to financial reasons they did not provide service to the community. In support of the franchising process, the Village wishes to provide the Commission with facts regarding video franchising in the Village of Northbrook.

Cable Franchising in Our Community

Community Information

Northbrook, Illinois, is a Village with a population of 33,435. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since 1982.

Our Current Franchise

Our current franchise began on August 7, 2004, and expires on August 7, 2019. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the Village of Northbrook in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

The cable operator to provides the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have two channels devoted to educational access; and one channel devoted to government access and one public access channel.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: Northbrook receives a pass through fee (monthly external charge) of \$0.20 per subscriber per month for PEG facilities and equipment used in aid of government and educational access channels pursuant to Section 622(g)(2)(C) of the Cable Act (47 U.S.C.542 (g)(2)(C)).

Our current franchise does not contain institutional network ("I-Net") requirements however Comcast provides the feed to the head end for distribution of PEG access channels. The initial Cable Franchise Agreement, 1992 – 2004, included an I-Net for Northbrook, which included both video and data transmission, In 2001 Northbrook signed a franchise agreement with a competitive provider and that second franchise agreement contained provisions for a I-Net. (I-Net was part of the negotiations balance with PEG requirements included in the incumbent's franchise agreement. Once the competitive franchise provider defaulted on the franchise, the Village rebuilt its own I-NET and has had support from Comcast for equipment necessary for routing signals.

Our franchise contains the following requirements regarding emergency alerts: Consistent with the provisions of FCC Regulations Part 11, subpart D, Section 11.51(h)(1), 47 C.F.R. §11.51(h)(1), and as such regulations may from time to time be amended, the Grantee shall install and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within such regulation. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. An example of when this function has been helpful is the following: On September 11, 2004, our Village experienced a water main break that impacted the whole community. Fortunately we had the cable television emergency override and were able to notify a majority of the community about the emergency water boil order. Residents were informed about the situation and directed to our local government channel, Northbrook Community Television (NCVT-17), for up to the minute updates as the scenario changed. In fact, Northbrook officials used the system several times as the situation worsened to a total water ban/shut-off, back to a boil order and later to an all clear. The emergency override was a valuable tool for notifying residents about what could have been a very dangerous situation.

"Amber Alerts" using the local Northbrook cable TV override have proved successful with a 100% success rate for finding missing persons in the area. Thanks to the quick action of informed citizens watch cable television in Northbrook, residents have found a missing child with autism, wandering elderly, as well as a few other unique situations. The use of

our local government channel provided detailed information specifically for Northbrook that was not detailed on local network channels.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. Comcast is required to comply with FCC Customer Service Standards.

Presently the Comcast Cable System has been designed and is capable of providing Cable Service throughout the Authorized Area. The Cable Company shall extend its System and provide service consistent with the provisions of this Article and the Franchise Agreement.

Comcast is required to install its Cable System (excluding only Drops to individual dwelling units) in all new residential subdivisions and developments, as those terms are defined in the Subdivision Code. Said installation shall be undertaken contemporaneously with the installation of electric or telephone facilities in such subdivision or development unless Company is not timely notified of the subdivision or development. After Cable System installation, Company shall be capable of providing Cable Service to any dwelling unit in such subdivision or development.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: The head end serving the Cable System in the Authorized Area serves other communities subject to potentially differing franchise requirements. As a result, Comcast agrees that it shall deploy new Cable Services on the Cable System that are comparable to the Cable Services commercially deployed by the Company in the areas served by the same head end that serves the Cable System in the Authorized Area. Such Cable Services shall be deployed on the Cable System within thirty-six (36) months of the Village's written demand, unless the Company reasonably determines that such deployment would not be economically or technically feasible and notifies the Village of the basis for that determination within eighteen (18) months of the Village's notice. The Village does not require the Company to employ any specific transmission technology, nor require the Company to implement a technology or service that can be shown to be financially infeasible to implement given various factors, including the remaining term of the Franchise Agreement.

Our system was rebuilt to state of the art technology within the past ten years. Comcast also provides Internet services throughout the community although this service is not covered in our Franchise Agreement, nor are we eligible to receive franchise fees for their use of our rights-of-way.

Our franchise contains the following insurance and bonding requirements: In addition to standard insurance and construction bond requirements, the cable franchise contains a Security Fund requirement for \$50,000.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal

office as well before it may access the public rights of way. Village and Company shall each designate a single point of contact to coordinate and facilitate all Construction, installation, repair and maintenance issues.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The Village may audit the cable company to verify the accuracy of Franchise Fees. Because the cable company's failure to comply with or to perform certain obligations under our Franchise Agreement, or its failure to do so in a timely manner may result in damage to the Village that is difficult to determine, the Village and the Company agreed to liquidated damages as the liquidated sum or sums to be reasonably paid in light of the anticipated loss caused by or resulting from the specified violation, default and resulting injury. Specific amounts are included in our franchise agreement.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: The Franchise is subject to current law as amended from time to time.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: The Village can convene a meeting or public review session with the Company for the purposes of discussing the technology and performance of the System. All evaluation sessions shall be open to the public and shall be advertised in a newspaper of general circulation within Village at least ten (10) days prior to each session.

Competitive Cable Systems

- Our community granted a competitive franchise to 21st Century Cable, presently known as RCN, a cable overbuilder, in 2000 and that provider is not providing service in my community today. RCN defaulted on the agreement and never completed the build and never offered service to the community due to financial difficulties. They did, however, abandon fiber lines in the community right-of-way, some of which was used to build our current Village owned I-Net

Our franchise agreement with 21st Century Cable was negotiated on a level playing field and both parties were pleased with the outcome. The Illinois Overbuild Act of 1997 played an important role in negotiations as the requirements of the franchises were similar if not identical in most respects. Northbrook was approached by 21st Century in 1999 and signed the franchise in 2000. They were scheduled to turn on the first subscriber in 2001. Both RCN and Comcast agreed to capital facilities and PEG support provisions. Northbrook proactively solicited competition to facilitate entry into a competitive market. Negotiations were based on a level playing field provision with the existing franchise provider.

Conclusions

The local cable franchising process functions well in Northbrook, Illinois. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including Northbrook, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Village of Northbrook therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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